JUDGE PRESKA

08 CV 03054

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD STANTON (as trustee for Ashley Stanton) on behalf of himself and all others similarly situated. Plaintiff, v. MERRILL LYNCH & CO., INC. and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, Defendants.	Civil Action No. **CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** **JURY TRIAL DEMANDED**

Plaintiff, individually and on behalf of all other persons similarly situated, by his undersigned attorneys, alleges the following upon personal knowledge as to himself and his own acts and upon information and belief as to all other matters based upon the investigation made by and through his attorneys, which investigation included, among other things, a review of the public documents and news releases concerning the Defendants, including their press releases and public filings with the U.S. Securities and Exchange Commission (the "SEC").

NATURE OF THE ACTION

1. Plaintiff brings this action as a class action on behalf of himself and all other persons who purchased and/or repurchased auction rate securities ("ARS")(defined below) from Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill") from March 25, 2003 through February 13, 2008 (the "Class" and "Class Period"), to recover damages caused as a result of Merrill's violation of the federal securities laws.

2. ARS are municipal bonds, corporate bonds, and preferred stocks with interest rates or dividend yields that are periodically re-set through auctions, typically every 7, 14, 28, or 35 days. ARS are issued with long-term maturities or even in perpetuity. In the case of Auction Rate Preferred Securities typically issued by closed-

end funds in order to provide the funds' leverage, there is no maturity date and some are paying interest rates of just above 3.00%. However, due to ARS's interest rate or dividend yield re-set feature, ARS have been marketed as short-term instruments. ARS, however, bear no resemblance to any cash management vehicles and, in fact, federal regulations prohibit money market funds from investing in ARS.

3. Merrill deceptively marketed ARS as cash alternatives to money market funds for investors needing liquidity and utterly failed to disclose material information about the ARS they were marketing.

4. Merrill uniformly failed to disclose that ARS are not cash alternatives to money market funds but are instead complicated financial products based on bonds having maturities of 30 years and longer. Merrill also failed to disclose that ARS were only "liquid" because Merrill and other broker-dealers created an artificial market for ARS which would dry up as soon as these broker-dealers decided to remove themselves from the auction process. Merrill also failed to disclose that during the Class Period it purchased ARS for its own account to avert auction failures, and that, but for its intervention a great deal of these auctions would have failed.

5. Instead of disclosing the true nature of ARS and the substantial liquidity risks associated with them, Merrill continued to push as many ARS as possible unto its customers in order to unload the inventory off its already troubled balance sheet.

6. After unloading millions of dollars worth of ARS by means of a rigged auction market, on or about February 13, 2008, Merrill and other broker-dealers simply stopped participating in ARS auctions and walked away entirely. As a result, thousands of investors who thought they were holding highly liquid investments purchased from Merrill are now saddled with long term securities they cannot sell.

7. Investors have no prospect of ever selling their securities through the auction market which has now been exposed as manipulated and artificial. The only chance for investors to sell their ARS and to achieve liquidity is to take a "haircut" and

sell their securities at a substantial discount to par value.

8. Thus, Plaintiff and the other Class members have been harmed as a result of Merrill's deceptive conduct and misrepresentations because the ARS they purchased from Merrill are no longer liquid and are also now worth less due to their illiquidity.

9. This lawsuit seeks injunctive relief to compel Merrill to rescind millions of dollars in ARS transactions it executed during the Class Period and to recover compensatory and punitive damages on behalf of the Class who have suffered and continue to suffer damages as a result of being stuck with these illiquid securities.

JURISDICTION AND VENUE

10. The claims alleged herein arise under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b) and 78t, and Rule 10b-5, 17 C.F.R. § 240.10b-5 promulgated thereunder.

11. The jurisdiction of this Court is based on Section 27 of the Exchange Act. 15 U.S.C. § 78aa and 28 U.S.C. §§ 1331 and 1337.

12. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b). Many of the acts alleged herein, including the dissemination to the investing public of the misleading statements and omissions at issue, occurred in substantial part in this District. Moreover, Merrill maintains its principal U.S. executive offices in this District.

13. In connection with the acts, transactions and conduct alleged herein, Merrill used the means and instrumentalities of interstate commerce, including the United States mails, interstate telephone communications and the facilities of national securities exchanges and markets.

PARTIES

14. Plaintiff purchased ARS from Merrill during the Class Period as set forth in the attached certification.

15. Defendant Merrill Lynch & Co., Inc., together with its subsidiaries,

provides investment, financing, insurance, and related services to individuals and institutions worldwide. Merrill Lynch & Co., Inc. trades on the New York Stock Exchange under the ticker symbol "MER" and maintains its headquarters at 4 World Financial Center, 250 Vesey Street, New York, NY 10080.

16. Defendant Merrill, a direct subsidiary of Merrill Lynch & Co., Inc., is a registered broker-dealer engaged in a full-service securities business, including retail and institutional sales, investment banking services, trading, and research.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all persons who acquired ARS from Merrill from March 25, 2003 through February 13, 2008, and who were damaged thereby. Excluded from the Class are the Defendants, their officers and directors, affiliates, legal representatives, heirs, predecessors, successors and assigns, and any other entity in which the Defendants have a controlling interest or of which they are a parent or subsidiary.

18. The members of the Class are located in geographically diverse areas and are so numerous that joinder of all members is impracticable. Throughout the Class Period, there were more than $300 billion ARS outstanding, which were actively traded by Merrill. While the exact number of Class members is unknown at this time and can only be ascertained through appropriate discovery, Plaintiff believes there are thousands of members of the Class who acquired ARS from Merrill during the Class Period.

19. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- Whether Merrill violated the federal securities laws based upon the facts alleged herein;

- Whether Merrill acted knowingly or recklessly in making materially misleading statements and/or omissions during the Class Period;

- Whether the market prices and liquidity of ARS marketed by Merrill during the Class Period were artificially inflated because of Merrill's conduct complained of herein; and

- Whether the members of the Class have sustained damages and, if so, the proper measure of damages.

20. Plaintiff's claims are typical of the claims of the members of the Class as Plaintiff and members of the Class sustained damages arising out of Merrill's wrongful conduct in violation of federal laws as complained of herein.

21. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

22. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members of this Class is impracticable. Furthermore, because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for the Class members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

SUBSTANTIVE ALLEGATIONS

The ARS Market

23. ARS are municipal bonds, corporate bonds, and preferred stocks with interest rates or dividend yields that are periodically re-set through auctions, typically every 7, 14, 28, or 35 days. ARS are usually issued with maturities of 30 years, but the maturities can range from 5 years to perpetuity.

24. ARS were first developed in 1984, and the ARS market has grown to well over $300 billion. In the past, mostly institutional investors participated in the ARS

markets but recently the broker-dealers reduced the minimum investment from $250,000.00 to $25,000.00, placing these securities within reach of individual investors.

Auction Mechanics

25. ARS are auctioned at par so the return on the investment to the investor and the cost of financing to the issuer between auction dates is determined by the interest rate or dividend yield set through the auctions.[1]

26. According to the disclosure documents (the prospectus or official statement) for each security, the interest rate or dividend yield is supposed to be set through an auction (commonly referred to as a "Dutch" auction) in which bids with successively higher rates are accepted until all of the securities in the auction are sold.

27. Typically, investors can only submit the following types of orders: 1) a "hold" order, which is the default order for current investors (i.e., the order that is entered for a current holder if the holder takes no action), where a current investor will keep the securities at the rate at which the auction clears; 2) a "hold-at-rate" bid, where a current investor will only keep the securities if the clearing rate is at or above the specified rate; 3) a "sell" order, where a current investor will sell the securities regardless of the clearing rate; or 4) a "buy" bid, where a prospective investor, or a current investor who wants more securities, will buy securities if the clearing rate is at or above the specified rate.

28. Disclosure documents often state that an investor's order is an irrevocable offer. The final rate at which all of the securities are sold is the "clearing rate" that applies to all of the securities in the auction until the next auction. Bids with the lowest rate and then successively higher rates are accepted until all of the sell orders are filled. The clearing rate is the lowest rate bid sufficient to cover all of the securities for sale in the auction.[2]

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[1] Between auctions, investors might be able to buy or sell ARS in the secondary market at prices greater than, equal to, or less than par.

[2] For example, suppose $100,000 of securities were for sale and the auction received four buy bids. Bid A was for $50,000 at 1.10%, Bid B was for $50,000 at 1.15%, Bid C was for $50,000 at 1.15%, and Bid D was for $25,000 at 1.20%. Under these circumstances, the "clearing rate" would be 1.15%, meaning all of the securities in the auction would pay interest at a rate of 1.15% until the next auction. Bid A would

29. If there are not enough bids to cover the securities for sale, then the auction fails, the issuer pays an above-market rate set by a pre-determined formula described in the disclosure documents, and all of the current holders continue to hold the securities, with minor exceptions. If all of the current holders of the security elect to hold their positions without bidding a particular rate, then the clearing rate is the all-hold rate, a below-market rate set by a formula described in the disclosure documents.

Broker-Dealers' Role in Auctions

30. The issuer of each security selects one or more broker-dealers to underwrite the offering and/or manage the auction process. Investors can only submit orders through the selected broker-dealers. During the Class Period, Merrill was a broker-dealer in the ARS market.

31. The issuer pays an annualized fee to each broker-dealer, such as Merrill, engaged to manage an auction. The fee is typically 25 basis points (i.e., .25% of 1%) for the par value of the securities that it manages.

32. The issuer also selects an auction agent to collect the orders and determine the clearing rate for the auction. Investors must submit orders for an auction to the broker-dealer by a specified time. Many broker-dealers have an internal deadline by which investors must submit their orders to them.

33. This internal deadline allows the broker-dealer sufficient time to process and submit the orders to the auction agent. Other broker-dealers allow investors to submit orders up until the submission deadline, i.e., the deadline for broker-dealers to submit orders to the auction agent. The broker-dealers must submit the orders to the auction agent before the submission deadline, and usually must identify each separate order.

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be allocated $50,000, Bids B and C would receive pro-rata allocations ($25,000 each), and Bid D would receive no allocation.

This is how a true Dutch auction is supposed to operate, and this is how the auction process is described to investors in offering documents. However, as described below, the actual auction process employed by Merrill bore little resemblance to a true Dutch auction.

Auction Agents' Role in Auctions

34. After receiving the orders from the broker-dealers, the auction agent calculates the clearing rate that will apply until the next auction. In practice, however, if there is only one broker-dealer, as in the case of many of the auctions managed by Merrill, the broker-dealer can discern the clearing rate before submitting the orders to the auction agent.

35. The auction agent allocates the securities to the broker-dealers based on the orders they submitted. The auction procedures generally state that orders are filled in the following order: hold orders, hold-at-rate and buy bids with a rate below the clearing rate, hold-at-rate orders with a rate at the clearing rate, and buy bids with a rate at the clearing rate.

36. When there are more bids for securities at the clearing rate than securities remaining for sale, the securities are allocated on a pro rata basis first to the hold-at-rate bidders and then to the buy bidders. Generally, the auction procedures require broker-dealers to follow the same hierarchy in allocating the securities to their customers.

SEC Finds Bid-Rigging of ARS Auctions by Broker-Dealers

37. From 1984 to 2006, the ARS market had grown to more than $200 billion and the fees collected by the 20 or so broker-dealers running this market exceeded $600 million per year.

38. In order to keep this gravy train operating, it was of utmost importance for broker-dealers to portray the ARS market as extremely liquid because the primary target market for these securities were investors with short-term investment goals or money-market needs.

39. Any hint that the auction market for ARS was anything but robustly liquid would send investors running for the exits. Thus, a failed auction, or even a rumor of one, was a marketing stigma that Merrill could not tolerate.

40. However, the ARS auctions were not nearly liquid enough to support the

billions of dollars in ARS that Merrill and other broker-dealers were pumping out to investors on a daily basis.

41. In order to conceal the inherent illiquidity of the auction market – which would be a death-knell to the industry – Merrill and the other leading broker-dealers agreed to engage in various practices they termed "stabilization." In reality, however, the conduct was nothing short of market-manipulation designed to mask an auction market that lacked sufficient demand.

42. In an Administrative Proceeding dated May 31, 2006, the SEC found that broker-dealers, including Merrill, engaged in various illegal practices in order to make it appear that the auctions were successful and legitimate when, in fact, they were not.

43. Broker-dealers were found to routinely take over customers' bid orders by filling in the blanks on open or market orders after viewing other bidders' orders. This practice favored certain customers over others and allowed the broker-dealers to easily manipulate the auction price.

44. Broker-dealers bid for their own accounts without disclosing this to clients or asked their customers to change orders in order to:

i. prevent failed auctions, thereby supporting the "no failed auction" marketing claim; and

ii. set artificial "market" rates, at levels chosen by broker-dealers themselves.

45. The SEC found rearranging bids through "netting" of in-house buy-and-sell orders ahead of actual auctions in order to change the priority of bids. Before submitting bids to the auction agent, broker-dealers changed or "prioritized" their customers' bids to increase the likelihood that the bids would be filled. As a result of this prioritization and a similar practice known as "cross-trading," certain bids were moved up in the disclosed hierarchy by which different types of bids would be filled.[3] In certain

[3] One example of prioritization occurred when certain broker-dealers received a sell order from one customer and a buy order from another customer in the same auction. Rather than submitting each order to

instances, these practices resulted in certain investors' bids displacing other investors' bids when the auction was oversubscribed, affected the clearing rate, and did not conform to disclosed procedures.

46. The SEC also found rampant submission or revision of bids after deadlines. As described above, most auctions had an internal deadline that broker-dealers set for investors to submit bids to the broker-dealers and a formal submission deadline set by the offering documents for broker-dealers to submit bids to the auction agent. Broker-dealers allowed certain investors to submit or revise bids after these deadlines. In addition, the broker-dealers themselves submitted or revised bids after these deadlines. These practices advantaged investors or the broker-dealers who bid after a deadline by displacing other investors' bids, affected the clearing rate, and did not conform to disclosed procedures.

47. The SEC also found that broker-dealers collaborated with certain customers by asking them to bid at auctions and then compensating them with higher-than-clearing rates in the secondary market. For example, pursuant to an express or tacit understanding reached prior to or during an auction: (1) certain broker-dealers provided a higher return by having the investor submit its bid at a lower rate than the investor actually wanted to receive, allowing the auction to clear at the lower rate, buying the securities from the investor after the auction, and then selling the securities back to the investor at below par value; (2) certain broker-dealers simply displaced an investor's bid and then compensated the investor by selling securities to the investor at below par value in the secondary market; and (3) certain broker-dealers provided a higher return by delaying the settlement date for certain investors.

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the auction agent as required by the disclosure documents, broker-dealers instead netted those orders before submitting them to the auction agent. Cross-trading occurred when certain broker-dealers actually transferred securities from a customer that wanted to sell to a customer that wanted to buy, rather than submitting the bids in the auction. Pursuant to both practices, these customers that wanted to buy securities were considered to be existing holders so that their orders had a higher priority in the auction than other new customers' bids for securities. None of these procedures were consistent with the description of the auction process found in the various prospectuses for the ARS marketed by Merrill.

48. Finally, the SEC found that certain broker-dealers provided different "price talks"[4] to different customers, placing certain customers at an advantage over others.

49. The SEC's findings demonstrated that the ARS auctions were often auctions in name only and allowed broker-dealers and/or their preferred customers to earn the best interest rates and manipulate the ARS market.

50. The 15 broker-dealers were fined $13 million, censured by the SEC and ordered to "cease and desist" from these practices in the future.

51. The fines and SEC investigations not withstanding, the broker-dealers were not prepared abandon their abusive practices and to allow a failed, or even a potentially failed, auction.

52. Throughout the Class Period, the broker-dealers, including Merrill, continued to engage in various practices to artificially bolster the auction markets without fully disclosing their conduct to the investing public.

The Auction Market Starts to Unravel

53. In 2007, a credit crisis of unprecedented proportion swept across the United Stated that continues to roil the financial markets to this day.

54. By mid 2007, banks stopped financing private equity deals, the prices of U.S. residential real estate went into a steep decline, and the mortgage market for sub-prime borrowers essentially shut down. The collapse of the credit markets forced banks, including Merrill, to report more than $50 billion in losses and write-downs and began infecting the ARS market.

55. Merrill struggled to maintain the illusion of a healthy and liquid auction market despite the fact that demand of ARS by its corporate and institutional clients essentially dried up. This shift was driven, in large part, by a March 2007 decision by the Financial Accounting Standards Board ("FASB") requiring ARS to be listed on balance

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[4] Price talk is a broker-dealer's estimate of the likely range within which an auction will clear.

sheets as "short-term investments" rather than under the heading of "cash equivalents."

56. Corporations responded to this by moving out of ARS so that their balance sheet cash positions would not be reduced as a result of the FASB decision. This meant that many corporations no longer wanted to buy ARS. As corporate demand for ARS evaporated, Merrill had to maintain more ARS inventory on its books.

57. Rather than disclose the weakening demand for ARS in the auctions during the Class Period, Merrill continued to intensely market ARS to its customers as a liquid cash alternative.

58. By the middle of 2007, legitimate demand for ARS virtually disappeared. However, Merrill, together with other broker-dealers, continued to manipulate the ARS auctions and to disseminate information that did not reflect the actual supply-and-demand dynamics of the ARS market in order to maintain an aura of legitimacy and liquidity for these ARS.

59. Merrill engaged in this conduct, among other reasons, in order to unload the millions of dollars in ARS it had in inventory. The only way Merrill could accomplish this was by deceiving investors into believing that the ARS market was liquid, when in reality, it was not.

60. By August 16, 2007, several monthly auctions failed amid the turmoil in the credit markets. Investors did not show to bid in auctions during August for about 60 auctions worth $6 billion of ARS. Also, some credit rating agencies were advising that "they would not be surprised to see further failed auctions in the days or weeks ahead."

61. Thereafter, auctions began failing with some regularity, and those that did succeed, would have failed but for Merrill's intervention. Merrill, and other broker-dealers, continued to intervene in order to prop-up the auction market by bidding with knowledge of other bids, submitting bids after the internal bidding deadline imposed on investors, and by directly or indirectly influencing or setting the clearing rates with considerable frequency.

62. Although Merrill was aware that there was no legitimate auction demand for ARS, it still marketed and sold ARS as a liquid cash alternative.

63. After unloading as many ARS from its balance sheet unto unsuspecting investors, on or about February 13, 2008, Merrill stopped supporting the auctions and simply walked away from the ARS market.

64. On February 13, 2008, 87% of the auctions for ARS failed when Merrill and other broker-dealers pulled the plug on the ARS market. As a result, thousands of investors holding millions of dollars of ARS purchased from Merrill are now left with illiquid ARS. ARS holders have no prospect of ever selling their securities by means of an auction market that has been exposed as artificial and manipulated by Merrill and other broker-dealers. Class members' only prospect is to try to sell their illiquid ARS at a steep discount to par value.

65. Accordingly, Plaintiff seeks injunctive relief to compel Merrill to rescind billions of dollars in ARS transactions it executed during the Class Period and to recover compensatory and punitive damages on behalf of the Class who have suffered and continue to suffer damages as a result of Merrill's deceptive conduct.

ADDITIONAL SCIENTER ALLEGATIONS

66. The Defendants have acted with scienter in that they knew that the statements issued or disseminated about ARS were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated in or acquiesced to the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding the ARS market, their control over and/or their associations with the ARS market which made them privy to confidential proprietary information concerning the ARS market, participated in the fraudulent scheme alleged herein.

67. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to the investing public. The ongoing fraudulent scheme described could not have been perpetrated over a substantial period of time, as described herein, without the knowledge and complicity of the personnel at the highest levels of the Defendants. Defendants were motivated to materially misrepresent the true nature of the ARS auction market in order to: (i) attract new investors who would only invest in ARS if they believed a highly liquid auction market existed; (ii) unload ARS in Merrill's inventory to unsuspecting investors who believed they were purchasing a liquid investment; and (iii) continue collecting substantial fees of approximately 25 basis points per year for managing the ARS auctions on behalf of issuers.

THE SAFE HARBOR PROVISION IS INAPPLICABLE

68. The statutory safe harbor under the Private Securities Litigation Reform Act of 1995, which applies to forward-looking statements under certain circumstances, does not apply to any of the allegedly false statements pleaded in this complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward-looking, they were not adequately identified as "forward-looking statements" when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements.

69. Alternatively, to the extent that the statutory safe harbor is intended to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because, at the time each of those forward-looking statements was made, the particular speaker had actual knowledge that the particular forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized and/or approved by an executive officer of Defendants who

knew that those statements were false, misleading, or omitted necessary information when they were made.

LOSS CAUSATION / ECONOMIC LOSS

70. During the Class Period, as detailed herein, the Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated the value and liquidity of ARS and operated as a fraud or deceit on acquirers of ARS purchased from Merrill.

71. As detailed above, when the true nature of the ARS auction market was revealed, the ARS held by members of the Class became illiquid and as a result declined in value. This decline in the liquidity and value of ARS was a direct result of the nature and extent of Defendants' fraud finally being revealed to investors and the market. The timing of the illiquidity in ARS and magnitude of the price decline negates any inference that the loss suffered by Plaintiff and other members of the Class was cause by changed market conditions, macroeconomic or industry factors or other facts unrelated to the Defendants' fraudulent conduct. The economic loss, i.e., damages, suffered by the Plaintiff and other Class members was a direct result of Defendants' fraudulent scheme to artificially inflate the ARS price by manipulating the auction markets and the subsequent significant decline in the liquidity and value of ARS sold by Merrill after Defendants' prior misrepresentations and other fraudulent conduct was revealed.

72. At all times relevant, the Defendants' materially false and misleading statements or omissions alleged herein directly or proximately caused the damages suffered by the Plaintiff and other Class members. These statements were materially false and misleading because they failed to disclose a true and accurate picture of the ARS auction market as alleged herein. Throughout the Class Period, Defendants publicly issued materially false and misleading statements and made omissions of material facts, causing the market price of ARS to be artificially inflated. Plaintiff and other Class members purchased ARS at these artificially inflated prices and were damaged thereby.

COUNT I
Violations of §10(b) of the Exchange Act and SEC Rule 10b-5 (Against All Defendants)

73. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

74. This Count is alleged against all of the Defendants and is based upon Section 10(b) of the 1934 Act, 15 U.S.C. § 78j(b), and SEC Rule 10b-5 promulgated thereunder.

75. During the Class Period, Defendants directly engaged in a common plan, scheme, and unlawful course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices, and course of business which operated as fraud and deceit upon Plaintiff and the other members of the Class, and failed to disclose material information in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiff and the other members of the Class. The purpose and effect of said scheme, plan, and unlawful course of conduct was, among other things, to induce Plaintiff and the other members of the Class to purchase ARS during the Class Period at artificially inflated prices and under false pretenses that the market for ARS was liquid and robust.

76. As a result of the failure to disclose material facts, the information Defendants disseminated to the investing public was materially false and misleading as set forth above, and the market price and liquidity of ARS was artificially inflated during the Class Period.

77. In ignorance of the duty to disclose the false and misleading nature of the statements described above and the deceptive and manipulative devices and contrivances employed by the Defendants, Plaintiff and other members of the Class relied, to their detriment, on the integrity of the market price and liquidity of the auction market when purchasing ARS from Defendants. Had Plaintiff and the other members of the Class known the truth, they would not have purchased said securities or would not have

purchased them at the inflated prices that were paid.

78. Plaintiff and the other members of the Class have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proved at trial.

79. By reason of the foregoing, Defendants directly violated Section 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder in that it: (a) employed devices, schemes, and artifices to defraud; (b) failed to disclose material information; or (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class in connection with their purchases of ARS during the Class Period.

COUNT II
Violation of Section 20(a) of the Exchange Act
(Against Defendant Merrill Lynch & Co., Inc.)

80. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

81. Defendant Merrill Lynch & Co., Inc. acted as a control person of Defendant Merrill within the meaning of Section 20(a) of the Exchange Act as alleged herein.

82. By virtue of its 100% ownership of Merrill, Merrill Lynch & Co., Inc. had the power to influence and control and did influence and control, directly or indirectly, the decision-making by Merrill, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. Merrill Lynch & Co., Inc. was provided with or had unlimited access to copies of the reports, press releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

83. As set forth above, Merrill violated Section 10(b) and Rule 10b-5 by its acts and omissions as alleged in this complaint. By virtue of its position as a controlling person, Merrill Lynch & Co., Inc. is liable pursuant to Section 20(a) of the Exchange Act.

As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchase and retention of ARS from Merrill Lynch & Co., Inc. during the Class Period.

WHEREFORE, Plaintiff, on his own behalf and on behalf of the Class, prays for judgment as follows:

(a) Determining that this action to be a proper class action and certifying Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure;

b) Awarding compensatory damages in favor of Plaintiff and the other members of the Class against the Defendants for the damages sustained as a result of the wrongdoings of Defendants, together with interest thereon;

(c) Awarding Plaintiff the fees and expenses incurred in this action, including reasonable allowance of fees for Plaintiff's attorneys and experts;

(d) Granting extraordinary equitable and/or injunctive relief as permitted by law, equity and federal and state statutory provisions sued on hereunder; and

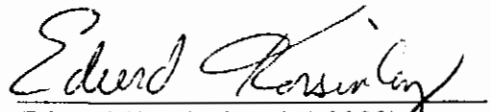
(e) Granting such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: March 26, 2008

LEVI & KORSINSKY, LLP

By: 

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